

Newsflash

Section 194R - Additional
guidelines for removal of
difficulties

September 2022



Section 194R - Additional guidelines for removal of difficulties



Inserted vide Finance Act 2022, Section 194R of the Income-tax Act, 1961 (**the Act**) mandates deduction of tax at source (**TDS**) on benefit or perquisite in respect of business and profession. The provision has been made effective from July 01, 2022. The Central Board of Direct Taxes (**CBDT**) had earlier issued a Circular dated June 16, 2022¹ containing guidelines for removal of difficulties in application of Section 194R of the Act.

Considering the peculiarity of the provision and uncertainty surrounding transactions that might fall within the ambit of Section 194R of the Act, further clarifications were sought by the stakeholders on ambiguous matters. Accordingly, the CBDT has now issued another Circular dated September 13, 2022² containing additional guidelines for removal of difficulties in implementation of Section 194R of the Act.

It is inter alia clarified that the Circular is meant only for the removal of difficulties in implementation of provisions of Section 194R of the Act on part of the deductor and *does not impact the taxability of income in the hands of the recipient* which shall be governed by the relevant provisions of the Act.

1. TDS has been done away in the case of Banks/specified financial institutions on one-time loan settlement/waiver as TDS would have cost them out of their pockets. This has been done to reduce the burden of bearing the tax deduction by banks as they are already taking a haircut by settling/ waiving off the underlying loans;
2. Under CBDT Circular dated June 16, 2022 it was stated that where a Service Provider (**SP**) incurs some expenses in the course of rendering services to a Service Recipient (**SR**) and the invoice was obtained in the name of SP, then this expense is the liability of the SP and not of SR. It was clarified that when the SR meets such liability of SP, it is in effect is a benefit/perquisite provided to the SP. Hence, in such a situation, reimbursement of an expense was a benefit/perquisite on which tax is required to be deducted under Section 194R of the Act by the SR.

This aspect has been re-emphasized in the new Circular dated September 13, 2022 wherein CBDT has mentioned that where the invoice is in the name of the SP, it is the SP who would be entitled to the benefit of input tax credit and thus reimbursement of such expenditure by SR would create benefit/perquisite in hands of the SP making it liable for tax deduction.

The new Circular has borrowed the concept of '*pure agent*' from the GST law to clarify that if the SP acts as a pure agent for SR, no TDS would be required under Section 194R of the Act. The definition of pure agent has been taken from GST Valuation Rules, 2017. In addition to the said definition, following conditions have been laid out in the Circular which need to be fulfilled by SP to qualify as a pure agent:

¹ CBDT Circular No. 12 of 2022

² CBDT Circular No. 18 of 2022

- a) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;
 - b) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
 - c) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.
3. It has also been clarified that for out-of-pocket expenses (reimbursements), there will be no liability for TDS under Section 194R of the Act provided such reimbursements are already a part of the consideration under the invoice subjected to TDS under any other section of the Act, viz. 194C/ 194J;
 4. In respect of dealer conferences, it is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If that so, the benefit/perquisite provider will not be required to deduct tax at source under Section 194R of the Act;
 5. Further, expense of stay of dealers/ participants for days which are on account of overstay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of Section 194R of the Act except for a day immediately before the date of actual start of the conference and a day immediately following the actual end date of the conference;
 6. Once Company "A" has deducted tax on gifting of car in accordance with Section 194R of the Act (or released the car after dealer "B" showed him payment of tax on such benefit) and dealer "B" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of Section 32 of the Act shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" can avail depreciation on fulfillment of other conditions for claiming depreciation;
 7. It is also clarified that the provision of Section 194R of the Act are not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state;
 8. It is further clarified that TDS is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in Clause (18) of Section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

Nangia Andersen LLP's Take

The tax department is leaving no stone unturned for effective implementing tax deduction at source under the provisions of Section 194R of the Act, which in addition to a wide coverage, has a lot of practical difficulties in effective implementation monitoring. The additional guidelines are a step in right direction to apprise the taxpayers and minimize litigation in the future.





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